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No. 207

Supreme Court of the United States

October Term, 1962

Consolidated Rock Products Company and Valley Rock Estate Company, *Appellants*,

v.

City of Los Angeles, *Appellee*.

BRIEF FOR APPELLANTS IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

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Supreme Court of the United States

OCTOBER TERM, 1962

No. 307

CONSOLIDATED ROCK PRODUCTS COMPANY and VALLEY REAL ESTATE COMPANY, *Appellants*,

v.

CITY OF LOS ANGELES, *Appellee*.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

BRIEF FOR APPELLANTS IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS

I.

The appellee's Motion to Dismiss is founded on a plain misstatement of the record.

The appellee contends that neither of the two questions posed in the Jurisdictional Statement raises a substantial issue. This is because—so appellee says—the findings of fact below establish that the appellants' land "could be put to some use and had some value" despite the challenged zoning. (Motion, pp. 9, 11). Therefore, the appellee argues, this is but the familiar case of zoning that prevents a particular valuable use but permits other, albeit less valuable, uses; and in such a case the courts will not interfere

with the legislative judgment. Indeed, appellee ventures so far as to urge that the case is determined by the principle that an ordinance which merely "deprives the property of its most beneficial use" is not thereby rendered unconstitutional. (Motion, p. 11).

But this is no such case.

The appellee's contention that appellants' land was found to have "some use" and "some value" under the challenged zoning is based, paradoxically, on the trial court's determination that the land, so zoned, has no "economic value." By insisting on the qualifying adjective "economic", the trial court "specifically negated appellants' allegations that it had no other value at all," according to the appellee, citing App. C, pp. 39a-40a, of the Jurisdictional Statement. (Motion p. 8).

There is a studied failure, in the Motion, to state what the "other value" is. But it is necessary only to turn to the appellee's citation to discover it. Doing so dissolves the basis upon which the entire Motion is constructed.

App. C, pp. 39a-40a, of the Jurisdictional Statement, cited by the appellee, sets forth the trial court's determination that the property, under the challenged zoning, has no economic value. The court found that "due to the continuing flood hazard and the nature of the soil to contend that the subject property has any economic value for agricultural, residential, business, commercial or industrial use other than the extraction of rock, sand and gravel is preposterous."

That determination immediately follows a sentence holding that the property "can only serve the purpose

as a detritus spreading ground and retarding basin for flood water[s] emerging from the Tujunga Canyon before they reach Hansen Dam." And it immediately precedes a sentence pointing out that "the subject property could be used as a 'wild-life' area in its natural state just as any other part of the surface of the earth, flat or mountainous undeveloped by human hands can be so used."

Thus, the trial court did find that the property has some value. It has value as a detritus spreading ground for the Hansen Dam flood control system and as a "wild-life" area, *i.e.*, value as a park—the use to which the City Council was so strongly urged to devote the property. In other words, the land does have value, under the challenged zoning, *to the public*.

But it has no value *to the owners*.

This is what the trial court found when it determined that the property had no "*economic* value."

Hence we are returned to the two questions posed in the Jurisdictional Statement. They cannot be dodged. They are most substantial.

The appellee attempts to evade the questions by twice stating that the California Supreme Court considered the property to have "some value" for purposes other than rock, sand and gravel operations despite the challenged zoning. (Motion, pp. 8-9, 11). For this statement the Motion refers to App. A, pp. 14a-15a, of the Jurisdictional Statement. But this reference discloses that the court said nothing of the sort. The reference is to the passage in the court's opinion wherein it merely recited that "there was testimony before the legislative body" that the prop-

erty could be devoted to other uses. As the Jurisdictional Statement shows, this recital is a very plain mistake. (Juris. St., pp. 17-18). Moreover, it was not offered as a rejection of the trial court's very firm finding of fact; on the contrary the recital was accompanied by a concession showing that the admitted "seasonal flooding" is hardly consistent with such purported testimony. (Juris. St., p. 17; Juris St., App. A, p. 15a).

The appellee's dodge, therefore, does not succeed.

II.

The Motion to Dismiss makes a subsidiary contention that the second question posed by the Jurisdictional Statement lacks substance. This contention is based upon a declaration by the California Supreme Court that "there was substantial evidence" that dust from appellants' proposed operations would have "a damaging effect" upon sufferers from respiratory ailments in the neighborhood. (Motion, p. 9).

The answer to the appellee's contention is that a mere declaration that there was such evidence in the record—though the fact was found by the trial court to be contrary to that evidence (Juris. St., p. 10)—does not exhaust the inquiry demanded by the Fourteenth Amendment and the decisions of this Court. Particularly is this so where, as here, a quarrying operation has for years been in operation on an immediately adjacent property more than one third as large as the property of the appellants, and the appellee's own expert admitted at the trial that the appellants' proposed operation could be conducted with no greater "carry of dust" than from the existing opera-

tion. (Tr. 726; see also Tr. 521-22; *cf.* Juris. St., p. 23, n. 6). The expert's admission makes doubly significant the appellee's failure to challenge the proposition, supported by the trial court's finding of fact, that the City, by appropriate regulation and restrictions, could prevent any objectionable effects of the proposed operation. (Juris. St., pp. 21-22). This Court's decisions have most pointedly insisted upon an appraisal of such a proposition, *Goldblatt* v. *Town of Hempstead*, 369 U.S. 590, 594-95 (1962); and most clearly the California Supreme Court failed to make that appraisal. (Juris. St., p. 22).

Indeed the gross inadequacy of the lower court's Constitutional inquiry is highlighted by one point made in the Motion that the appellee apparently deems of importance—that is, that the adjacent property on which quarrying operations are presently conducted is "far removed from the adjoining communities." (Motion, p. 4). But roughly half of the appellants' property is as far or further removed from these communities. (Juris. St., App. C, p. 40a). Even if the City might validly prohibit the proposed operations on an easterly portion of the property, it does not follow that it may prohibit them on the *entire* property which is more than two miles long. (Juris. St., App. C, p. 40a).

III.

The appellee's Motion emphasizes the California Supreme Court's affirmance of the trial court's determination that "reasonable minds" might differ on the challenged zoning. But it neglects to mention the point about which there might be such reasonable difference.

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The trial court first determined that the appellants' proposal, properly regulated by the City, posed no threat to health or property values. In the following paragraph it noted that there might be "certain noise," that danger to children would probably be no more than in many other circumstances, and that "esthetically" a natural alluvial wash is "superior" to excavation therein—and that "*these* are all factors" (emphasis added) that a legislative body might "properly" consider. (Juris. St., App. C, p. 42a). The trial court then concluded that "reasonable minds have differed" on the propriety of the zoning since there were differences between the City Planning Commission's Examiner, then the Commission, and then the City Council. (Juris. St., App. C, p. 43a; and see the California Supreme Court's similar point, Juris. St., A, p. 3a, n. 1).

But this is merely to say—that reasonable minds might differ as to whether it would be more in the public interest to have the property confined to a park and wild-life area than to permit the extraction of rock, sand and gravel needed by the community—the controversy that was determined by the legislative body.[1]

We agree that reasonable minds might differ on *that* issue.

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[1] However, these uses may be, in fact, complementary. (Juris. St., pp. 14-15, n. 4). Means are available to satisfy the public's need for rock, sand and gravel as well as its desire for parks. For example, programs have been adopted for excavation of natural resources for a limited period with concurrent reclamation of the worked property. (*See e.g.*, Fairfax County [Virginia] Planning Division, *A Natural Resources Development Plan*, 1961).

But if the legislative body resolves that issue in favor of the proponents of a park area—as it did in this case—the Fourteenth Amendment requires compensation.

That is the question pointedly ignored by the appellee, just as it was ignored or erroneously answered (see Juris. St., pp. 16-17) by the lower court.

The decisions of this Court do not permit that question to be ignored. Appellants' property has been "taken" in the Constitutional sense even though they are left with bare possession and the duty to pay taxes. *Griggs* v. *Allegheny County*, 369 U.S. 84 (1962); *United States* v. *Causby*, 328 U.S. 256 (1946).

Appellee's Motion to Dismiss should be denied.

Respectfully submitted,

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